IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10040 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

==========

TAKHATSING BABUBHAI - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR JJ YAJNIK for Petitioner
NOTICE SERVED for Respondents
GOVERNMENT PLEADER for Respondents

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 08/11/2006

ORAL JUDGMENT

1. By way of this petition, under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate orders quashing and setting aside the

order dated 25.04.1995 removing the petitioner from the service. The petitioner has also challenged the order dated 18.01.1996. The petitioner has further prayed for appropriate orders directing the respondents to treat the petitioner in continues service of the respondents for all purposes.

2. Mr. J.J.Yagnik, learned Advocate appearing on behalf of the petitioner is absent, though this matter is called out twice. This being 1996 matter, this Court proceeds further ex–parte. On going through the averments made in the petition, it is the case on behalf of the petitioner that with regard to the alleged incident which took place on 01.11.1988 of alleged consumption of liquor by the petitioner, the petitioner came to be prosecuted vide complaint dated 13.02.1989 under Sections 85(1)(3) and 66(1)(b) of the Bombay Prohibition Act. He was placed under suspension with effect from 01.11.1988 and continued as such. It is the case of the petitioner that the aforesaid criminal prosecution continued and the petitioner came to be acquitted by the competent criminal Court vide order and judgment dated 30.11.1989. Thereafter, it appears that departmental proceedings were continued and charges leveled against the petitioner were held to be proved

and, therefore, on conclusion of the departmental inquiry, the Disciplinary Authority passed an order removing the petitioner from service vide order dated 25.04.1995. The petitioner preferred Special Civil Application No. 4845 of 1995 before this Court and pursuant to the order passed by this Court, the petitioner has made representation to Appellate Authority against the order of dismissal and the said representation also came to be dismissed. Therefore, the petitioner has preferred the present Special Civil Application.

3. It is the contention on behalf of the petitioner that once the petitioner has been acquitted by the competent Court, the Disciplinary Authority is not entitled to proceeding further with departmental inquiry for the same charges and therefore, when the petitioner was acquitted by the competent Criminal Court for the offences under Sections 85(1)(3) and 66(1)(b) of the Bombay Prohibition Act, the impugned order passed by the respondents is absolutely illegal.

4. On going through the charges, before the Disciplinary Authority allegations against the petitioner was that on 01.11.1988, the petitioner who was serving as

unarmed Police Constable at Anand Headquarters reported for duty after having consumed liquor and he misbehaved with the Officers and behaved in a manner which was not befitting a Police Constable and therefore, departmental inquiry was initiated against him. On conclusion of the departmental inquiry, the charges against the petitioner came to be proved. Considering the evidence and statements of other witnesses, it was found that the petitioner misbehaved and acted in a manner which not befitting to an employee of discipline force. The petitioner was served with show cause notice. After considering the reply filed by the petitioner, an order came to be passed removing him from the service. The charge of misbehavior and not befitting the Police Officer was not the subject matter of trial before the Criminal Court. Before the Criminal Court, the petitioner was charged for the offences under Sections 85(1)(3) and 66(1)(b) of the Bombay Prohibition Act. Only in a case where the charges are same normally the departmental inquiry might not be permissible, however, considering the charges levelled against the petitioner before disciplinary authority and the charges before the Criminal Court, cannot be said that they are similar. Under the circumstances, the contention of the petitioner that the disciplinary authority ought not to have

initiated departmental inquiry against the petitioner in spite of acquittal by the competent criminal Court, cannot be accepted, even otherwise charges were leveled against the petitioner that he misbehaved after taking liquor and misbehaved in a manner which is not befitting to the member of the police force. Even otherwise the order passed by the disciplinary authority removing the petitioner from the service is just and proper. There is no substance in the present petition, the same is required to be dismissed. Rule is discharged. Interim relief, if any, granted earlier shall stand vacated forthwith. There shall be no order as to costs.

[M.R.SHAH, J.]

satish